



POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Office of the Secretary

August 2, 2013

David A. Granger
P.O. Box 75
Fernandina Beach, FL 32035

Re: Appeal of the Postal Service's Determination to Close Downtown Fernandina
Beach Station, Fernandina Beach, FL

Dear Mr. Granger:

Enclosed please find a Postal Service motion to dismiss the proceeding which was filed on August 1, 2013. Under the Commission's rules, you may submit an answer to the motion. Your answer, if any, is due August 12, 2013.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ruth Ann Abrams".

Ruth Ann Abrams
Acting Secretary

Enclosures

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

IN THE MATTER OF:

FERNANDINA BEACH DOWNTOWN STATION
FERNANDINA BEACH, FLORIDA 32034

DOCKET No. A2013-7

**MOTION OF UNITED STATES POSTAL SERVICE
TO DISMISS PROCEEDINGS**
(August 1, 2013)

This matter commenced with a letter received by the Postal Regulatory Commission that purports to invoke its jurisdiction under 39 U.S.C. § 404(d) to consider an appeal of an alleged Postal Service decision to discontinue the Fernandina Beach Downtown Station in Fernandina Beach, Florida. The Postal Service moves to dismiss on two grounds. First, since the Petitioner's appeal concerns the rearrangement of retail facilities within the Fernandina Beach community, an event that falls outside the scope of section 404(d)(5), the Commission lacks subject matter jurisdiction and should dismiss the appeal. Alternatively, the scope of section 404(d) is limited to Post Offices and its requirements do not extend to the closing of a station or branch; thus, the Commission lacks subject matter jurisdiction and should dismiss the appeal.

PROCEDURAL HISTORY

On July 23, 2013, the Postal Regulatory Commission (“Commission”) docketed correspondence from David A. Granger and Julie L. Batts (“Petitioners”).¹ Petitioner Granger alleged that the Postal Service decision to discontinue the Fernandina Beach Downtown Station is without observance of procedure required by law; is unsupported by substantial evidence on the record; and is arbitrary, capricious and an abuse of discretion. Petitioner Granger argues that the Postal Service actions to close Fernandina Beach Downtown Station violates section 404(d)(5) requirement that the Postal Service shall take no action to close or consolidate a Post Office until 60 days after its written determination is made available to the public. Additionally, Petitioner Granger argues that by closing the Fernandina Beach Downtown Station, the Postal Service will violate section 101(b) which requires the Postal Service to provide effective and regular postal service. Petitioner Granger disputes the projected cost savings of closing the Fernandina Beach Downtown Station. Last, Petitioner Granger argues the Postal Service decision is arbitrary, capricious and an abuse of discretion because the Postal Service did not consider the option of consolidation. By means of Order No. 1789 (July 24, 2013), the Commission instituted a proceeding under 39 U.S.C. §404(d)(5) and established Docket No. A2013-7 in order to consider Petitioners’ appeals.

¹ Petition for Review - Suspension Pending Review Requested - Appeal Final Determination to Close Fernandina Beach Downtown Station Post Office - Docket 1363326-32034 (July 22, 2013); Post Office Closing Appeal from Julie L. Batts (July 22, 2013).

FACTUAL BACKGROUND

Fernandina Beach Downtown Station is located in Fernandina Beach, Florida at 401 Centre Street, in an unincorporated area in Nassau County. The Fernandina Beach community is administered politically by the City of Fernandina Beach and the Fernandina Beach Downtown Station is located in downtown Fernandina Beach. On November 19, 2011, the Proposal to Close the Fernandina Beach Downtown Station and Continue to Provide Service by Contract Postal Unit (Proposal) was posted at the Fernandina Beach Downtown Station, Fernandina Beach Post Office and Yulee Post Office. Administrative Record, Item No. 23 (round-date stamp on Proposal indicates that it was posted from November 19, 2011 to January 20, 2012).

On July 9, 2013, the Postal Service posted the Final Determination to Close Fernandina Beach Downtown Station and Continue to Provide Service by Contract Postal Unit (Final Determination) at the Fernandina Beach Downtown Station and at the Fernandina Beach Post Office.

Customers of the Fernandina Beach Downtown Station may obtain postal services at Books Plus, which opened as a Contract Postal Unit on October 14, 2011, at 107 Centre Street, 0.16 mile from Fernandina Beach Downtown Station;² Fernandina Beach Post Office, located approximately three miles from Fernandina Beach Downtown Station; the Yulee Post Office, located approximately eleven miles from Fernandina Beach Downtown Station; and through <http://www.USPS.com/> and other alternate access options, including eight stamp consignment sites located within three

² With the exception of Post Office Box rentals, Books Plus offers a full range of retail services to meet Fernandina Beach Downtown Station customers postal needs.

miles of Fernandina Beach Downtown Station. See Exhibit 1 (printouts from [USPS.com](https://www.usps.com) and [Google maps](https://www.google.com/maps)).³

ARGUMENT

As an initial matter, the Commission should dismiss the complaint on jurisdictional grounds. Specifically, the procedural requirements of 39 U.S.C. § 404(d) do not apply because the closing of Fernandina Beach Downtown Station does not qualify as a discontinuance action envisioned by 39 U.S.C. § 404(d). When determining whether it has jurisdiction to hear an appeal, the Commission must consider the context of the Postal Service's actions in the affected community. Typically, a change to the Postal Service retail network in a community constitutes a "rearrangement" if the move or elimination of a Postal Service retail facility in that community is performed as part of an overall realignment of the network of access points in that community. As a result of the change, the postal services available to the community must continue to meet the community's postal needs as measured by customer use of postal services in that community.

The Commission and its predecessor, the former Postal Rate Commission, have long recognized that section 404(d) does not apply to Postal Service actions that constitute a rearrangement of retail facilities within a community.⁴ See Order No. 436, PRC Docket No. A82-10, *Oceana Station*, (June 25, 1982); Order No. 448, PRC Docket No. 2010-2, *Steamboat Springs, Colorado* (April 27, 2010); Order No. 477, PRC Docket

³ Exhibit 1 uses the term "Post Office" for retail units staffed by postal employees, thus including stations, branches and Post Offices.

⁴ For convenience, the term "Commission" refers to both the former Postal Rate Commission and its successor, the Postal Regulatory Commission.

No. 2010-3, *East Elko Station* (June 22, 2010); and Order No. 1159, PRC Docket No. 2011-90, *Pimmit Branch* (January 20, 2012). In 1982, the Commission dismissed an appeal considering the Postal Service's determination to close the Oceana Station in Virginia Beach as part of an overall plan to rearrange postal retail and delivery operations within the Virginia Beach community. The plan included the future establishment of a new retail facility in Virginia Beach, located four miles from Oceana Station.⁵ Order No. 436 at 4.

Petitioners served by Oceana Station claimed that the change in retail operations qualified as a discontinuance under 39 U.S.C. § 404(d). In dismissing the appeal, the Commission opined that in enacting section 404(d), "Congress intended to permit the Postal Service to rely on less formal decision-making, and correspondingly, to give the Commission no jurisdiction to hear appeals of such decisions, when considering where retail facilities are to be located within the community." *Id.*, at 7. The Commission concluded that "the Postal Service is not required to follow the formal section 404([d]) procedure when it is merely rearranging its retail facilities in a community." *Id.*, at 1.

Similarly, in Steamboat Springs, the Commission dismissed an appeal after determining that the Postal Service had a "planned network of retail facilities in the Steamboat Springs community." Order No. 448 at 5. In that appeal, the Postal Service's planned network included the Sundance Post Office, which continued to house Post Office boxes, the Steamboat Springs Post Office (located 1.3 miles away), which provided retail services and Post Office box service, and plans to construct a new

⁵ The City of Virginia Beach is relatively large at 307 square miles. See http://www.vbgov.com/file_source/dept/comit/Document/vb_facts_and_figures.pdf.

consolidated post office. *Id.*, at 5-6. In finding that the Postal Service's action is a rearrangement of retail facilities in the community and not subject to appeal under section 404(d), the Commission accordingly dismissed the appeal.

Even when the rearrangement of postal retail services within the community include no plans to build a new retail facility, the Commission has concluded that section 404(d) is inapplicable. In East Elko, the Postal Service closed the East Elko Station and transferred retail services to the main Elko Post Office, located 1.5 miles away. Order No. 477 at 7. In dismissing the appeal for lack of jurisdiction, the Commission explained "while there is no new facility ... the East Elko Station customers are not losing access to the postal services offered in their community." *Id.* Thus, under the Commission's formulation, closing the East Elko Station was not a discontinuance action within the scope of section 404(d).

Most recently, in Pimmit Branch, the Postal Service decided to consolidate retail services from Pimmit Branch to the new retail facility at the main Falls Church Post Office, located two miles away. Order No. 1159 at 11. The Commission found that closing the Pimmit Branch was part of a broader plan to rearrange retail facilities in the Falls Church community; thus, it concluded that section 404(d) did not apply. *Id.*, at 12. Since the Commission has consistently held that the requirements of section 404(d) do not apply to such rearrangements, it dismissed the appeal for lack of jurisdiction.

As recognized in longstanding Commission precedent, the section 404(d) procedural requirements apply only where postal customers lose access to postal services, and postal customers do not lose access to postal services where alternate retail facilities are located in "close proximity" to the discontinued station. See Order No.

477 at 7-8. Here, Fernandina Beach Downtown Station customers will continue to have access to Books Plus CPU, located 0.16 mile from Fernandina Beach Downtown Station; Fernandina Beach Post Office, located approximately three miles from Fernandina Beach Downtown Station; the Yulee Post Office, located approximately eleven miles from Fernandina Beach Downtown Station; and through <http://www.USPS.com/> and other alternate access options, including eight stamp consignment sites located within three miles of Fernandina Beach Downtown Station. Due to the close proximity of other postal facilities and the presence of alternate access options, closing Fernandina Beach Downtown Station will not cause postal customers to lose access to postal services in their community. Because this appeal concerns the rearrangement of retail facilities within a community, section 404(d) does not apply. Accordingly, the Commission should dismiss the appeal.

Alternatively, the Commission should dismiss the appeal on grounds that the facility in question is not a "Post Office." This appeal concerns the discontinuance of a classified station, which is a retail facility that is Postal Service-operated and is under the responsibility of an Administrative Post Office. See Handbook PO-101, Postal Service-Operated Retail Facilities Discontinuance Guide (January 2012), at 53 (defining Classified Station). In the Postal Service's view, section 404(d) does not apply to Fernandina Beach Downtown Station because Fernandina Beach Downtown Station is not an independent Post Office.⁶ Petitioners fail to allege facts that constitute a

⁶ See Comments of the United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), PRC Docket No. 2010-3, *East Elko Station* (April 19, 2010); H.R. Rep. No. 94-1444, 94th Cong., 2d Sess. 17 (1976) (conference report on H.R. 8603, which explained that the provision granting the right of appeal apply to Post Offices only and not to other postal facilities).

condition precedent to any jurisdiction of the Commission under Section 404(d).

Therefore, the Commission should dismiss the appeal for lack of jurisdiction.

CONCLUSION

The United States Postal Service respectfully requests that the Postal Regulatory Commission dismiss this appeal.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Anthony F. Alverno
Chief Counsel
Global Business & Service Development

Laura Zuber

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Washington, D.C. 20260-1137
(202) 268-6036; Fax -5329
August 1, 2013

Exhibit 1 A2013-7



Directions to 401 Centre St, Fernandina Beach, FL 32034
0.1 mi – about 57 secs



107 Centre St, Fernandina Beach, FL 32034



1. Head **east** on **Centre St** toward **N 2nd St**
Destination will be on the left
About 57 secs

go 0.1 mi
total 0.1 mi



401 Centre St, Fernandina Beach, FL 32034



These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Map data ©2013 Google

Directions weren't right? Please find your route on maps.google.com and click "Report a problem" at the bottom left.

Books Plus, CPU



Directions to 407 Centre St, Fernandina Beach, FL 32034
2.9 mi – about 8 mins

 1997 Sadler Rd, Fernandina Beach, FL 32034

-
- 1. Head **west** on **Sadler Rd** toward **Susan Dr**
About 2 mins

go 0.5 mi
total 0.5 mi

 -  2. Turn right onto **A1A S/FL-200/Rte A1A S/State A1A S/State Route A1A S/S 8th St/**
The Buccaneer Trail
About 5 mins

go 2.2 mi
total 2.7 mi

 -  3. Turn left onto **Centre St**
Destination will be on the right
About 1 min

go 0.2 mi
total 2.9 mi

 407 Centre St, Fernandina Beach, FL 32034

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Fernandina Beach Post Office



Directions to 407 Centre St, Fernandina Beach,
FL 32034
1.9 mi – about 5 mins



1722 S 8th St, Fernandina Beach, FL 32034



1. Head north on **A1A S/FL-200/Rte A1A S/State A1A S/State Route A1A S/S 8th St/**
The Buccaneer Trail
About 3 mins

go 1.7 mi
total 1.7 mi



2. Turn left onto **Centre St.**
Destination will be on the right
About 1 min

go 0.2 mi
total 1.9 mi



407 Centre St, Fernandina Beach, FL 32034

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Winn-Dixie

Stamp booklets only

Exhibit 1 A2013-7



Directions to 407 Centre St, Fernandina Beach,
FL 32034
1.9 mi – about 5 mins

A 1862 S 8th St, Fernandina Beach, FL

- A1A** 1. Head north on **A1A S/FL-200/Rte A1A S/State A1A S/State Route A1A S/S 8th St/ The Buccaneer Trail** go 1.7 mi
About 3 mins total 1.7 mi
- 2. Turn left onto **Centre St** go 0.2 mi
Destination will be on the right total 1.9 mi
About 1 min

B 407 Centre St, Fernandina Beach, FL 32034

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Wells Fargo Bank

Stamp booklets only



Directions to 407 Centre St, Fernandina Beach,
FL 32034
2.1 mi – about 6 mins



1836 S 8th St, Fernandina Beach, FL 32034

1. Head **south** toward **A1A S/FL-200/Rte A1A S/State A1A S/State Route A1A S/S 8th St/The Buccaneer Trail** go 367 ft
total 367 ft
-  2. Take the 1st right onto **A1A S/FL-200/Rte A1A S/State A1A S/State Route A1A S/S 8th St/The Buccaneer Trail** go 1.8 mi
total 1.9 mi
About 4 mins
-  3. Turn left onto **Centre St** go 0.2 mi
Destination will be on the right
total 2.1 mi
About 1 min



407 Centre St, Fernandina Beach, FL 32034

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Staples

Stamp booklets only



Directions to 407 Centre St, Fernandina Beach,
FL 32034
2.3 mi – about 6 mins

 1385 Amelia Plaza, Fernandina Beach, FL 32034

1. Head south on S 14th St toward Park Ave go 371 ft
total 371 ft

 2. Take the 1st right onto Courson Rd go 0.2 mi
total 0.3 mi

 3. Take the 1st right onto A1A S/FL-200/Rte A1A S/State A1A S/State Route A1A S/S
8th St/The Buccaneer Trail go 1.8 mi
total 2.1 mi
About 4 mins

 4. Turn left onto Centre St go 0.2 mi
Destination will be on the right total 2.3 mi
About 1 min

 407 Centre St, Fernandina Beach, FL 32034

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Wal-Mart Supercenter

Stamp booklets only



Directions to 407 Centre St, Fernandina Beach,
FL 32034
2.8 mi – about 8 mins

 1421 Sadler Rd, Fernandina Beach, FL 32034

1. Head west on **Sadler Rd** toward **Susan Dr** go 0.4 mi
About 1 min total 0.4 mi

 2. Turn right onto **A1A S/FL-200/Rte A1A S/State A1A S/State Route A1A S/S 8th St/
The Buccaneer Trail** go 2.2 mi
About 5 mins total 2.6 mi

 3. Turn left onto **Centre St** go 0.2 mi
Destination will be on the right total 2.8 mi
About 1 min

 407 Centre St, Fernandina Beach, FL 32034

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Publix Supermarkets

Stamp booklets only



Directions to 407 Centre St, Fernandina Beach, FL 32034
2.8 mi – about 8 mins

 870 Sadler Rd, Fernandina Beach, FL 32034

- | | | |
|---|---|---------------------------|
| 1. | Head east on Sadler Rd toward S 14th St | go 141 ft
total 141 ft |
|  | 2. Take the 1st left onto S 14th St
About 3 mins | go 1.3 mi
total 1.3 mi |
|  | 3. Turn left onto Jasmine St
About 1 min | go 0.4 mi
total 1.7 mi |
|  | 4. Turn right onto S 8th St/The Buccaneer Trail
About 2 mins | go 0.9 mi
total 2.6 mi |
|  | 5. Turn left onto Centre St
Destination will be on the right
About 1 min | go 0.2 mi
total 2.8 mi |

 407 Centre St, Fernandina Beach, FL 32034

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

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CVS

Stamp booklets only



Directions to 407 Centre St, Fernandina Beach, FL 32034
3.0 mi – about 8 mins

2101 Sadler Rd, Fernandina Beach, FL 32034

1. Head **west** on **Sadler Rd** toward **Citrona Dr** go 0.6 mi
About 2 mins total 0.6 mi

2. Turn **right** onto **A1A S/FL-200/Rte A1A S/State A1A S/State Route A1A S/S 8th St/** go 2.2 mi
The Buccaneer Trail total 2.8 mi
About 5 mins

3. Turn **left** onto **Centre St** go 0.2 mi
Destination will be on the right total 3.0 mi
About 1 min

407 Centre St, Fernandina Beach, FL 32034

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Walgreens

Stamp booklets only